

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 19, 2009

**CHARLIE BURKS v. CHERRY LINDAMOOD, WARDEN  
AND STATE OF TENNESSEE**

**Appeal from the Circuit Court for Wayne County  
No. 14512     Jim T. Hamilton, Judge**

---

**No. M2009-00071-CCA-R3-HC - Filed September 24, 2009**

---

The Petitioner, Charlie Burks, appeals the Wayne County Circuit Court's summary dismissal of his petition for habeas corpus relief. In his petition, he argued that the Department of Correction had wrongly calculated his sentence and that his sentence had expired. On appeal, the Petitioner argues that the habeas corpus statute is unconstitutional and that he is being deprived of his inalienable liberty. Following our review of the record, we affirm the order summarily dismissing the petition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Charlie Burks, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Mark A. Fulks, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

On October 23, 2008, the Petitioner filed a petition for a writ of habeas corpus, challenging his sentence for three convictions for robbery with a deadly weapon.<sup>1</sup> From the documents attached to the petition, it appears that, on November 19, 1981, in Tipton County, the Petitioner was

---

<sup>1</sup> The Petitioner stated that this was his second petition for habeas corpus relief. He asserted that he was unable to attach a copy of the first petition because "a water pipe burst in [his] cell destroying most if not all of [his] copies." He did attach the State's initial response to this first petition, a motion to dismiss the petition. According to the State's memorandum of law in support of the motion to dismiss this second petition, the first petition was dismissed by order entered June 21, 2007.

sentenced to thirty-five years in case number 1550 and, on December 9, 1983, in Shelby County, to seventeen years in case number B78894 and ten years in case number B78895. He submitted that these sentences were ordered to be served concurrently and that his sentence had expired:

Petitioner, submits and count(s) from November 19, 1981, (28) twenty-eight years flat to date, further, count (13) thirteen years good time equals (40) forty-years credit total. Moreover, pre-trial jail credits moves the (40) forty-years to equal more. As it now stands and the record will support (5) five years overdue for release.

The “TOMIS Offender Sentence Letter” submitted with the petition provides for a maximum sentence of sixty-two years and specifically states that these three sentences were to be served consecutively. He also attached minutes of the court from case numbers B78894 and B78895, reflecting a jury verdict of guilty and signed by the trial judge. These minutes do not reflect the consecutive or concurrent nature of the sentences. The “Offender Information Systems Sentencing Transaction” sheets also reflect consecutive sentences and show that the Petitioner began serving his sentence in Tennessee on January 18, 1991, following expiration of a sentence in Mississippi. Apparently, the Petitioner requested jail credit information from the Clerk of the Criminal Court in Shelby County. The clerk’s response stated that the information sought was not available in that office and directed him to other offices where he might be able to locate the desired information. The letter also stated, “In your letter, you were inquiring how your cases were running. They are running concurrent to one another.”

On November 13, 2008, the State filed a motion for summary dismissal, seeking dismissal on the basis that the Petitioner had failed to attach his judgments forms or, alternatively, that he had failed to substantiate his claim. The State further submitted that the Petitioner “appears to be complaining about sentence credits, the province of the APA. See Tenn. Code Ann. § 4-5-101 *et. seq.*” The habeas corpus court granted the State’s motion and dismissed the petition by order filed on December 12, 2008. It is from the order of summary dismissal that the Petitioner appeals.

On appeal, the Petitioner argues that the habeas corpus statute, Tennessee Code Annotated section 29-21-109, is an unconstitutional suspension of the writ: “The writ lay to test any restraint contrary to fundamental law, including petitioners [sic] challenging the restraint of his liberty without having to prove the judgment is void or” his sentence is illegal. He further contends that the State of Tennessee is “illegally depriving him of his inalienable right to his liberty by permitting slavery as punishment for crime . . . .”

### **Analysis**

The State first contends that the petition was correctly dismissed because the Petitioner failed to attach to his petition copies of the judgments against him. The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 21 (Tenn. 2004). An application for the issuance of the writ of habeas corpus may be summarily dismissed for the failure to attach the judgment forms. Tenn. Code Ann. § 29-21-107(b)(2). However, the Petitioner attempted to provide a reason for their absence. See id. In the petition, the

Petitioner attempts to explain why he was unable to provide judgment forms: “For all present purposes due to Petitioner’s conviction(s) being so old, Respondent, refused, did not process a copy of the judgment(s) in question restraining Petitioner, Mittimus Writs of Confinement in Petitioner’s Institutional File, several requests were made to no avail, further, requested the convicting court clerk’s office . . . .” He also attached to the petition a hand-written letter from the criminal clerk’s office in Shelby County stating that, “in those years, we did not do the judgement [sic] sheets as done today, (illegible) is the official record of the judgment (illegible) the signature of the judge” and that “old files . . . are housed in archive so (illegible) is required, and delay may occur for (illegible) files.”

Notwithstanding any potential procedural waiver, dismissal for failing to state a cognizable ground for habeas relief was also correct. The determination of whether to grant habeas corpus relief is a question of law and our review is de novo. See Summers v. State, 212 S.W.3d 251, 262 (Tenn. 2007). The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. See Tenn. Const. art. I, § 15. However, the grounds upon which habeas corpus relief will be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). In this state, habeas corpus relief only addresses detentions that result from void judgments or expired sentences. See Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). A judgment is void “only when ‘[i]t appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Hickman, 153 S.W.3d at 20 (quoting State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000) (citations omitted)). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005). Moreover, it is permissible for a court to summarily dismiss a habeas corpus petition, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the record or judgment to indicate that the convictions or sentences addressed therein are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

First, we note that the Petitioner has attached an additional letter to his brief from Brandon Powers, Director of Management Information Services with the Department of Correction, to the warden of Lake County Regional Correctional Facility. Mr. Powers concludes that he can find nothing to substantiate the Petitioner’s claim that his sentence was computed incorrectly:

His total Tennessee sentence was 45 years - 35 years from Tipton County for Robbery Armed with a Deadly Weapon (Case #1550), consecutive to his Mississippi sentence and 10 years from Shelby County for Robbery Armed with a Deadly Weapon (Case #878895), consecutive to Tipton County Case #1550. In addition he received another sentence in Shelby County for 17 years for Robbery Armed with a Deadly Weapon (Case # 878895) concurrent with his other sentences.

The letter confirms that the Petitioner was awarded pre-trial jail credits in all three cases and began serving his sentence in Tennessee on January 18, 1991. The letter then directs the Petitioner, “[i]f

he still feels he has a problem, . . . [to] follow the prescribed procedure for TDOC inmate inquiries—through his Case Manager to the Record Office which will then contact Sentence Management Services.”

Although the consecutive or concurrent nature of his sentences is not entirely clear from the attachments submitted by the Petitioner, the Petitioner has not provided this Court with sufficient documentation to substantiate his claim that his sentence is illegal or has expired. While the uniform judgment forms were not used at the time of the Petitioner’s convictions, the trial court, in all probability, made a sentencing decision or entered a sentencing order explaining the consecutive or concurrent nature of the Petitioner’s sentences. Most of the documentation provided by the Petitioner is in agreement that some consecutive service of his sentences was ordered. The Petitioner was not transferred to Tennessee until January 1991, after completing a sentence in Mississippi; the Petitioner has failed to take into account this information in computing his release date. One of the Petitioner’s sentences alone carries a sentence of thirty-five years. Moreover, the proper redress for any disagreement about the calculation of his sentence credits by the Department of Correction is the Administrative Procedures Act. See Brown v. State, 928 S.W.2d 453, 457 (Tenn. Crim. App. 1996); see also Tenn. Code Ann. § 4-5-101 to -325.

Although habeas corpus is addressed by our federal and state constitutions, the issuance of the writ has been regulated by statute for well over one hundred years. State v. Ritchie, 20 S.W.3d 624, 629 (Tenn. 2000). Nothing in the statute suspends the writ as asserted by the Petitioner. Our supreme court has recently held that, “[i]n the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions.” Summers, 212 S.W.3d at 261. The court further noted that, “[w]hen such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.” Id. We lack sufficient information to determine the effective length of the Petitioner’s sentences; regardless, it does not appear that any effective sentence would have expired. The Petitioner’s confinement results from his commission of criminal acts and is not, as argued by the Petitioner, equivalent to slavery.

### **Conclusion**

For the reasons stated herein, we conclude that the Wayne County Circuit Court did not err by summarily dismissing the habeas corpus petition. The judgment is affirmed.

---

DAVID H. WELLES, JUDGE